CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, January 16, 2013 9:00 AM

City Hall Council Chambers
15 Loockerman Plaza, Dover, Delaware

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF November 14, 2012 Meeting

NEW BUSINESS

Applicant #V-12-15:
35 Loockerman Plaza, The City of Dover has requested variances from the requirements of Article 4 §4.15 of the *Zoning Ordinance* pertaining to the front yard setback.

Subject property is zoned IO (Institutional and Office Zone) and is subject to the SWPOZ (Source Water Protection Overlay Zone) Tier 3 Excellent Recharge Area and H (Historic District Zone). The Tax Parcel # is ED-05-077.05-04-55.00-000. The owner of record is City of Dover.

Applicant #V-13-01:
127 South DuPont Hwy., Lin Properties, LLC has requested variances from the requirements of Article 4 §4.15 of the *Zoning Ordinance* pertaining to the front yard and rear yard setbacks.

Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel is ED-05-077.06-01-61.00-000. The owner of record is Lin Properties, LLC.

ADJOURN
29 Del.C. § 10004(e)(2)

THE AGENDA ITEMS MAY NOT BE CONSIDERED IN SEQUENCE. THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS.

CITY OF DOVER
BOARD OF ADJUSTMENT
November 14, 2012

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, November 14, 2012 at 9:00 A.M. with Chairman Sheth presiding. Members present were Mr. Senato, Col. Ericson, and Mr. Keller. Mr. Hufnal was absent.

Staff members present were Mrs. Townshend, Ms. Cornwell, Mrs. Harvey, Mrs. Purnell, and City Solicitor Rodriguez.

APPROVAL OF AGENDA

Mr. Keller moved to approve the agenda with the necessary change of the following applications: V-12-13 to be removed due to letter received to withdraw application, V-12-14 to be first on the agenda, and V-12-12 to be second on the agenda, seconded by Mr. Senato and unanimously carried (Hufnal absent).

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF September 19, 2012

Mr. Keller moved to table approval of the regular Board of Adjustment meeting minutes of September 19, 2012 until next meeting, seconded by Col. Ericson and unanimously carried (Hufnal absent).

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Townshend, Director of Planning and Community Development, reviewed the procedure for the meeting. She noted that approved variances expire after one (1) year if the approved project has not commenced; that all public notice for the applications on this agenda was completed in accordance with code requirements; and the meeting agenda was posted in accordance with Freedom of Information Act requirements.

Chairman Sheth questioned if there was any member who had a conflict of interest and there was none.

NEW BUSINESS

Applicant #V-12-14:

1275 South State Street, Bayhealth Medical Center Inc. has requested a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to setback of a monument sign.

Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel # is ED-05-086.05-02-13.00-000. The owner of record is Bayhealth Medical Center Inc.

Mrs. Tracey Harvey, Planner I, submitted the following items for the record: staff report, site plan, photographs and diagram. Mrs. Townshend stated that legal notice was published in the Delaware State News on November 4, 2012, and that the public was notified in accordance with regulations.

Representatives:

Mrs. Kim Diehl, of Kent Sign Company, and Pam Marecki, Assistant Vice President of Marketing for Bayhealth, were sworn in by Mr. Rodriguez, to testify on behalf of Bayhealth.

Mrs. Diehl testified that there is a 100-square-foot sign that is twelve feet tall at the location. Bayhealth is looking to make the signage at this location consistent in appearance with other locations. The new sign would be 60 square feet and seven feet tall. Bayhealth is requesting a variance to place the sign at the property line, which is the location of the current sign, as there is not sufficient space to meet the setback.

Responding to a question from Col. Ericson regarding the exceptional practical difficulty should the variance be denied, Mrs. Diehl stated that the larger sign would stay, and the sign would not be consistent. She added that the current sign is too big for the location. She added that there is nowhere to place the sign at the location, as it would be in the parking lot if it were moved to comply with the setback. The property line is at the pavement around the building, except for the grassy area where the sign is located.

Responding to a question from Col. Ericson regarding the estimated distance from the road to the sign, Mrs. Diehl responded that there were 38 feet from the sign to Route 13 and 68 feet from the sign to State Street.

Responding to a question from Col. Ericson regarding the legal non-conforming status of the current sign, Ms. Cornwell confirmed that the sign is legal non-conforming.

Responding to a request by Mr. Keller to explain the code requirements regarding replacement of a non-conforming sign such as the subject sign, Ms. Cornwell stated that the sign could be refaced on the existing structure; however, the current proposal is to replace the sign structure, which is not permitted by code.

Responding to Mr. Keller's question regarding whether the problem with moving the sign back would be the loss of a parking space, Mrs. Diehl stated that movement of the sign would result in the loss of one or two parking spaces and drive access around the building. She added that the spots lost would be parallel parking spots, not pull in spots.

Responding to a question from Mr. Keller regarding the distance from the back of the existing sign to the face of the building, Mrs. Diehl stated that she did not know.

Responding to Mr. Keller's question of whether there was a parking space and travel lane to the rear of the existing sign, Mrs. Diehl stated that there is a parking spot.

Pointing to the photograph showing the existing sign and the photograph showing the proposed sign, Mr. Keller questioned whether it was all travel way behind the existing sign in the photo. Mrs. Diehl responded that she believed that it was all travel lane and that the parking was to the side.

Mrs. Townshend stated that if the sign were to be moved into the drive aisle, the Fire Marshal's Office would need to review to ensure that the sign would not interfere with a required fire lane.

Col. Ericson noted that the proposed sign is considerably smaller than the existing sign.

Responding to Mr. Senato's question about the length and width of the proposed sign, Mrs. Diehl stated that it is proposed to be 72 inches tall and 120 inches long.

Responding to Mr. Keller's question regarding whether the sign encroaches into the right-of-way, Mrs. Diehl stated that the sign is just inside Bayhealth's property line and that there would be no encroachment with the new sign.

Responding to Mr. Keller's question about a prior variance for the building encroachment beyond the building restriction line (note on plan submitted); Mrs. Townshend responded that staff had not looked into prior variances.

Chairman Sheth declared the public hearing open.

There being no one present wishing to speak, Chairman Sheth declared the public hearing closed.

Chairman Sheth questioned if there was any additional correspondence for the record and there was none.

Col.Ericson moved for approval of V-12-14, based on testimony given and information from staff. Mr. Keller seconded the motion. The motion was carried unanimously.

Applicant #V-12-12:
800 North State Street, S&R, LLC has requested variances from the requirements of Article 6 §3.4 and Article 6 §3.9 of the *Zoning Ordinance* pertaining to the size of parking spaces and a reduction in the overall number of parking spaces.

Subject property is zoned C-2A (Limited Central Commercial Zone). The Tax Parcel # is ED-05-067.12-01-08.00-000. The owner of record is S&R, LLC.

Ms. Janelle Cornwell, Planner II, submitted the following items for the record: staff report, and site plan. The legal notice was published in the Delaware State News on November 4, 2012, and that the public was notified in accordance with regulations.

Chairman Sheth questioned if there was any member who had a conflict of interest and there was none.

Representatives:

Mr. Conny Malmberg of Young, Malmberg, & Howard. Mr. Doug Liberman of Larson Engineering Group Inc., was sworn in by Mr. Rodriguez. Mr. Leberman and Mr. Malmberg were in attendance to testify on behalf of the Onix Group.

Mr. Malmberg testified that the Compass Pointe project that includes the McGlynn Restaurant on the first floor, office space used by Mid Atlantic Fisheries, Chesapeake Utilities Corporate Office and possibly Trans America Continental Life Associates on the second, third, and part of the fourth floor. He stated that 2800-square foot of the fourth floor was planned for residential use. The proposed plan is to convert this space to office space. There is a difference in parking space requirements for residential as opposed to office. All of the offices do not require a lot of parking. The site does not permit them to add additional parking spaces along the lake due to the configuration of the 75-foot setback that is required for environmental reasons. The request is for six (6) undersized spaces. The trend is towards a mix of smaller vehicles. The Exceptional Practical Difficulty would be that there would be unusable building space if the variance is not granted. His client is the owner of the property. McGlynn's has the ability to have their employees park off-site if necessary in the Big Lots parking area. An exhibit was provided.

Responding to a question from Chairman Sheth regarding whether there would be any more residential area in the building, Mr. Malmberg replied that there would no longer be any residential area in the building.

Responding to a request for clarification from Mr. Keller regarding whether there was currently any usage on the fourth floor, Mr. Malmberg replied that the building is completely full other than the 2800 –square foot residential space which has a pending lease for office space.

Responding to a question from Mr. Keller regarding the occupancy hours for the second and third floor; Mr. Malmberg replied that the offices would have 9am to 5pm hours and there are very few employees with the Mid Atlantic Fisheries Company.

Responding to a question from Col. Ericson regarding the distance of parking spaces between the Countrie Eatery and McGlynn's and if there was still a fence located on the property; Mrs. Townshend replied that there is a fence.

Responding to a question from Col. Ericson regarding the use of the garage; Mr. Malmberg replied that the garage is in transition, as Ownership of the property recently changed.

Responding to a question from Col. Ericson regarding whether six (6) of the 114 parking spaces were in the garage area and whether they are used; Mr. Malmberg replied that the six (6) spaces are included and that they were being used. He was not sure if they were being used on a daily basis by patrons of McGlynn's.

Responding to a question from Col. Ericson asking if demolishing the garage would solve the problem; Mr. Malmberg replied that it would not change the need for a variance.

Responding to a question from Col. Ericson regarding the use of stacked spaces, Mr. Malmberg replied that there are lifts in the garage that consist of three (3) spaces at entry with three (3) spaces above for vehicles.

Responding to a question from Mr. Keller in regard to the lift being hydraulic, Mr. Liberman replied yes it is electric.

Responding to a question from Col. Ericson as to who uses the lift, Mr. Malmberg replied the plan was for resident parking. He added that demolishing the building would not add to the available parking on-site.

Responding to a question from Col. Ericson as to the count of the six (6) spaces when the spaces are not being used by the general public, Mr. Malmberg replied that there was no current plan for their use, but the spaces are counted in the code requirements. He stated that the variance being requested included the parking spaces. Also responding, Mrs. Townshend replied when the garage was part of the plan the fourth floor was to be residential, therefore; the six (6) spaces have always been counted as six (6) spaces. Staff does share the concern that they are not six (6) practical spaces.

Responding to a question from Mr. Keller if there would be a parking lift attendant, Mr. Malmberg replied no.

Mr. Malmberg stated that if parking became more constrained on-site it would only affect his client as owner of the facility. The parking spaces could be for employees instead of the general public since part of the calculation for parking spaces is for employees.

Responding to Col. Ericson regarding the use of the compass on the road for parking spaces; Mr. Liberman replied that the compass is part of the twenty-four (24) foot wide fire lane. There is no additional space that could be added. When the site was developed all the impervious area available was used for the parking layout which is the current layout of the site.

Responding to Col. Ericson regarding the size of compact vehicles; Mr. Liberman replied that the top ten (10) selling compact cars are less than the 196 inch length for a 16ft. long parking space. Also responding, Mr. Malmberg stated that the City does not have a large parking problem at the current time. Therefore; there has not been a need to create sub-compact parking spaces in downtown.

Mrs. Townshend stated that staff looked at other locations that have compact car parking standards and the size of the compact parking space requested is consistent with other locations that were found.

Mr. Senato stated that there should be a definite conclusion whether or not the six (6) spaces should be included.

Mr. Senato questioned the percentage change of handicap parking due to the additional spaces, if the spaces would be marked compact, and where the off-site parking would be located for the employees.

Responding to Chairman Sheth's question regarding the approval process of the Planning Commission for parking spaces when changing from residential to office; Mrs. Townshend replied that when the construction of the building came before the Planning Commission in 2006 they reviewed the fourth floor as residential which required two (2) parking spaces. For the remainder of the building the parking was calculated based on square footage. At that time there was a possibility that there would be a restaurant on the first floor which is now McGlynn's.

Planning Staff assured the Planning Commission that the restaurant parking requirements would be met. During the opening of McGlynn's the parking requirements were met for the restaurant, second and third floor office space, and fourth floor residential. Since that time the parking standards for restaurants have changed. The parking space for a restaurant at the current time is higher than in 2006. Noted in the Staff Report that you received on page four (4) of six (6) it specifies restaurants with bar and patio area and notes that the thirty-eight (38) parking spaces for the restaurant was based on the 2007 calculations at the time the restaurant was opened, but to date that is not the current code standard. In the past a portion of the fourth floor was converted which maxed out the parking spaces in terms of code requirements. Therefore; you have the remaining 2,800 square feet and there are two (2) spaces that can be allocated.

Responding to Mr. Sheth question as to whether needed parking could be made up if the garage were demolished, Mr. Malmberg replied that if the garage, which is counted as six (6) spaces, was demolished there would be a loss of parking.

Responding to Chairman Sheth's question regarding changing of the building and who would benefit financially; Mr. Malmberg replied that the owner would benefit financially. There is currently a tenant who is interested in finalizing a lease, and if the request is not approved there would be unused residential space.

Responding to Chairman Sheth regarding the proposed application for off-street parking waiver and not the six (6) parking spaces; Ms. Cornwell replied that the application is to allow for a reduction of three (3) off-street parking spaces and the garage is considered a part of the overall number. It could be increased to nine (9) if the garage was not counted, making it an increase from what was originally requested. The other variance requested is to allow for compact parking spaces all on the same application.

Responding to Mr. Senato regarding any changes to handicap parking spaces; Ms. Cornwell replied that they have more than the required number of handicap parking spaces. If they wanted to add another handicap parking space it would not be a problem. Handicap spaces count towards the overall number of parking spaces on-site.

Responding to Mr. Senato regarding compact spaces being marked as such if approved; Mr. Malmberg replied yes, they would be marked for compact vehicles only.

Responding to Col. Ericson regarding the first floor parking spaces parking standard requirements year; Mrs. Townsend replied that the parking standard being followed was the 2007 standard. It is not the current parking standard which would include more parking spaces.

Col. Ericson stated that it would not be a good idea to tear down a garage for three (3) parking spaces.

Mr. Senato stated that there is a parking problem and asked if the spaces were in existence at the current time would be counted down or added as compact spaces or would they be added as regular spaces rather than compact; Mr. Malmberg replied all new spaces would be compact as they are too small to be regular spaces.

Responding to Mr. Keller regarding whether there could be a lease with new tenants to use the six (6) spaces for employee parking; Mr. Malmberg stated that there are employees throughout the building and the employees are being taken into consideration when reviewing the parking calculations. He has discussed remote options with McGlynn's for their employee parking. Mr. Malmberg further stated that in the past year there has not been a parking issue even during the busiest hours.

Responding to Chairman Sheth's suggestion to demolish the garage; Mr. Malmberg replied that the garage is roughly a $200,000 building that would cost roughly $75,000 to demolish. Mr. Malmberg stated that it is not worth demolishing the garage to gain four (4) parking spaces. He stated that his client can look at trying to make the building more usable for employees of one or more of the businesses. He stated that also demolishing the garage and redesigning the site loses two (2) spaces from a legal perspective and the six (6) spaces will then be four (4) spaces.

Mr. Malmberg stated that the newly converted office space would have three (3) employees.

Mr. Senato suggested making arrangements to have off-street site parking at Big Lots.

Responding to Mr. Keller regarding why one or two full-size parallel parking spaces could not be added on the right side of the fire lane radius near the bike rack; Mr. Liberman replied that there is not sufficient space.

Responding to Mr. Senato regarding why the spaces to the left of the handicap spaces that are 12x40 loading space be used as added spaces; Ms. Cornwell replied that it is a required loading space. She stated that legally loading or unloading in the fire lane is prohibited. She also stated that regarding the other side no more impervious area for parking towards the fire lane. Parking spaces are either concrete or asphalt. The code does not recognize pavers for parking. She stated that the entire loading space cannot be used for parking because it does not have the necessary width or depth.

Mr. Malmberg stated that his clients and realtor spoke with McGlynn's, Big Lots, and the owner of the shopping center, and agreed that there could be reserved parking available for McGlynn's employees if necessary in the future.

Responding to Mr. Senato's suggestion of making the six (6) spaces of the garage building part of the lease agreement, Mr. Malmberg replied that it may be more economical to have a contractual relationship with the owner Mr. Silicato, who owns the shopping center with Big Lots.

Col. Ericson suggested that the owners find a solution for their parking issues if they arise in the future. At the current time they have the solution of using Big Lots parking lot if necessary. The variance request is only for three spaces, which is not a lot.

Responding to Mr. Keller regarding if there were any configuration from the plan to come up with the spaces near the fire lanes; Mr. Liberman replied that the one area was the three (3) head-in compact spaces, but it would cover up the loading spaces. He stated that it is very difficult to create parking in the impervious area.

Responding to Mr. Keller regarding modifying fire lanes to add parking; Ms. Cornwell replied that Staff would note that it is the required fire lane and the Fire Marshal would need to review any proposed change to the fire lane.

Responding to Col. Ericson regarding whether the Big Lots parking lot was used; would the applicant still need a variance; Ms. Cornwell stated that they would still be required to have a variance because they would still be short three off-street parking spaces on-site.

Responding to Col. Ericson if the application was delayed would it have a negative impact on the lease agreement; Mr. Malmberg stated that he did not know. He stated that delaying the application for a month would not change the proposal. A lot of time was spent on this proposal and with the Engineer and Planning Staff. This is a three (3) parking space waiver issue with a parking lot that has over 110 parking spaces. It is a 3% waiver which is a fairly minimum variance. Mr. Malmberg stated that this is a unique piece of property with historic footprints, and that the minimal variance would not set a precedent.

Responding to Mr. Keller in regard to his suggesting the designated six (6) spaces in the garage be tied to a lease arrangement; Ms. Cornwell replied that the parking would still be considered to be generally available for parking for people that utilize the building.

Chairman Sheth declared the public hearing open.

There being no one present wishing to speak, Chairman Sheth declared the public hearing closed.

Chairman Sheth questioned if there was any additional correspondence for the record and there was none.

Mr. Senato moved to deny the parking variance pertaining to the size of parking spaces and a reduction in the overall number of parking spaces for application #V-12-12, located at 800 North State Street, as there were several suggestions made as to possible solutions and postponement of the application that were not taken. There was no second and the motion failed due to the lack of a second. (Hufnal absent)

Col. Ericson moved to approve the parking variance pertaining to the size of parking spaces and a reduction in the overall number of parking spaces for application #V-12-12 based upon the testimony given and the information provided, staff report, requirements of Article 6 §3.4 and Article 6 §3.9 of the Zoning Ordinance, seconded by Mr. Keller and the motion carried 3-1.
(Senato denied and Hufnal absent).

Mr. Senato moved to adjourn the meeting, seconded by Col. Ericson and unanimously carried (Hufnal absent).

Meeting adjourned at 10:32 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

City of Dover

Board of Adjustment

January 16, 2013

V-12-15

Location:	35 Loockerman Plaza
Applicant/Owner:	City of Dover
Tax Parcel:	ED-05-077.05-04-55.00-000
Application Date:	November 16, 2012
Present Zoning:	IO (Institutional and Office)/H (Historic District)
Present Use:	Dover Public Library
Reviewed By:	Ann Marie Townshend, AICP
Variance Type:	Area Variance
Variance Requested:	Allow for the building to encroach into the front yard setback.

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* of Article 4 §4.15 of the *Zoning Ordinance* pertaining to the front yard setbacks. Specifically the applicant is requesting to allow the building to be located 17.3 feet from the front property line, rather than 20 feet as required.

Adjacent Land Uses
The adjacent properties are institutional uses as well, including City Hall, the U.S. Post Office, State offices, and the PNC and Wilmington Trust Banks. The Wilmington Trust property is zoned C-2A (Limited Central Commercial), and the other properties are zoned IO (Institutional and Office). All are located within the H (Historic District) zone.

Previous Related Planning Applications
H-09-01 – Historic District Commission Review of the Architectural Review Certificate

S-10-06 – Site Development Plan application, including review and approval of the Architectural Review Certificate by the Planning Commission.

Code Citation
Article 4 Section 4.15

	IO
Minimum required:	
Lot area	
Lot width (ft.)	50
Lot depth (ft.)	100
Front yard (ft.)	20
Side yard (ft.)	10
Rear yard (ft.)	15 or equal to building height
Side or rear yards which adjoin a residence zone (ft.)	30
Off-street parking	
Per 300 sq. ft. floor area or	1
Per employee (whichever is greater)	1
Maximum permitted:	
Building height	
Stories	10
Feet	130
Floor area ratio	4.0
Lot Coverage	4.0
Lot Coverage	85%

Exceptional Practical Difficulties Tests
Article 9, §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. Specifically the Board must determine:

2.1 Variance – The board shall have the authority to authorize variances from provisions of the zoning ordinance that are not contrary to public interest where the board determines that a literal interpretation of the zoning ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the zoning ordinance is observed and substantial justice done.

2.11 Area Variance. A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the zoning ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:

(a) the nature of the zone in which the property lies;
(b) the character of the immediate vicinity and the contained uses therein;
(c) whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
(d) whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the zoning ordinance.

1. The nature of the zone in which the property lies.

Applicant Responses:

a. The property is zoned IO and located in the Downtown Dover area within the City of Dover Historic District. The IO zoning permits the library use. City Hall and the Library are located on the same property. The adjacent properties are comprised of commercial and institutional uses and are part of an area of institutional buildings on Loockerman Street, Kings Hwy, Innovation Way, and Federal Street. The library site is bounded only by commercial and institutional properties, and the area is dominated by large government offices and institutions, many of which are located directly on the street and either are close to the right-of-way as the library or closer.

b. The site plan approved by the City of Dover Planning Commission showed the pilasters and sun shade system projecting over the 20-ft building restriction line, thus it is clear approval allowed for projections of the building components.

Staff Response:
The property is located within the IO (Institutional and Office) zone and is an institutional use. The property is also located within the H (Historic District) zone. The reduced front setback is compatible with the nature of the H zone.

The applicant states that the Planning Commission approved the building with an encroachment of the pilasters and sun shade system into the front yard. The *Zoning Ordinance* permits the projection of certain architectural features into the required setbacks. The site plan approved by the Planning Commission included the projection of the roof overhang (not pilasters) into the setback. The building itself complied with the required setbacks. The Planning Commission did not approve the encroachment of the building into the front yard setback. The building placement, as constructed, is closer to the front property line than was shown on the approved site plan. (A copy of the approved site plan is attached as Staff Exhibit A.)

2. The character of the immediate vicinity and the contained uses therein.

Applicant Responses:

a. The adjacent properties are all commercial and institutional uses that include the U.S. Post Office to the east, City Hall (on same property as the library), PNC Bank to the west, Merrill Lynch and DNREC Offices to the north, M&T Bank to the west and north, and State of Delaware government buildings to the south (across Loockerman Street). The properties of U.S. Post Office, City Hall, and DNREC offices are zoned IO, and each building encroaches into the 20-ft front yard setback. In fact, City Hall is located on the same property with the Dover Public Library.

b. One of the main purposes of setbacks is to provide a sense of openness on each side of the roadway where buildings address each side of the street. Loockerman Street (in the area of the library) has an extremely wide right of way width ranging between 120-ft to 218-ft, with a series of heavily landscaped islands separating the travel lanes. This width of right-of-way aids the Library meeting the intent of the code by providing more space between buildings addressing the street. Typical city right-of-way is 60-ft.

c. The proposed reduction of the front yard setback will not will not change the character of the neighborhood as the building is in relative alignment with the existing Post office and City Hall buildings. Additionally, buildings in the downtown area in general are located very near the street due to the nature of a downtown area and Historic District. The following buildings are located in the vicinity of the library, and have comparable setbacks as the library:
    i. City of Dover City Hall: 18.1-ft front yard setback
    ii. U.S. Post Office: 12.7-ft front yard setback
    iii. Richardson & Robbins Building: 10-ft front yard setback
    iv. Merrill Lynch Building: 15-ft building setback

d. The Dover / Kent County MPO prepared a neighborhood study with Downtown Dover Partnership (DDP). The study suggested downtown benefits from having buildings directly address the street in the downtown area, which creates a walkable, inviting downtown that provides better uses to the pedestrians by addressing streets with buildings rather than parking lots. Further, having continuous connections of buildings in close proximity to the streets offers pedestrians “places” to go, ultimately making the historic downtown Dover a better community.

Staff Response:

The character of the immediate vicinity is that of offices and governmental and financial services, as described by the applicant. The buildings in the immediate area are set back a variety of distances from the front property lines, but are generally near the street. The applicant refers to a wider than typical right-of-way for Loockerman Street. Loockerman Street is a wider than typical street, with a wide landscaped median.

Staff concurs with the applicant that building placement near the street is desirable in the H zone, and in the downtown area in general. The request would be consistent with the character of the immediate vicinity. Reduction of setbacks can be granted by the Planning Commission in the H zone, after review and recommendation by the Historic District Commission, as a part of the Architectural Review Certificate. The applicant did not request a setback waiver as part of the Architectural Review Certificate. The placement of the building is not consistent with what was shown on the approved site plan; rather the building was constructed nearer to the front property line than was shown on the approved site plan. Because the encroachment was discovered after construction of the building was nearly complete, the Board of Adjustment is the proper body to grant relief from the requirements of the *Zoning Ordinance.*

3. Whether, if the restriction upon the applicant**'**s property were removed, such removal would seriously affect neighboring properties and uses.

Applicant Responses:

a. Were the reduction of the setback approved, it would have no affect at all on the adjacent properties or their uses and most certainly not a serious affect. Actually, the reduction would allow the Library building to remain more in line with the existing structures on either side of it (the Post Office and City Hall) which also have a portion of their structures less than 20-ft from the right-of-way. The properties on the south side of Loockerman Street would not be affected in anyway given the wide right-of-way ranging between 120-ft to 218-ft in the area of the library. Additionally, the extremely wide right of way and heavily landscaped islands of Loockerman Street make this reduction barely noticeable from the south side of the street.
b. Granting the variance would not alter the character of the neighborhood given its location in the Historic District. Buildings that are located in the IO zone that encroach into the 20-ft front setback include:
    i. City of Dover City Hall: 18.1-ft front yard setback
    ii. U.S. Post Office: 12.7-ft front yard setback
    iii. Richardson & Robbins Building: 10-ft front yard setback

There are other C-2A zoned properties in the vicinity of the library that have buildings with similar setbacks, although the C-2 zone has a zero front yard setback. For example, the Merrill Lynch building and Wilmington Trust Drive- Thru structure are located 15-ft and 10.6-ft from the right-of-way, respectively.

Staff Response:
The reduction of the front setback from 20 feet to 17.3 feet would not seriously affect neighboring properties or uses. The building, in its current location, is consistent with neighboring properties.

4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the zoning ordinance.

Applicant Responses:

a. The City of Dover Library is a sophisticated building with a construction cost of $22M. The aesthetic design and functionability of which was the product of the involvement of a great many professionals and Dover community over the course of many years. Modifying the structure now to eliminate the 2.7-ft encroachment into the front yard setback is likely not even possible given the curved glassed, pilasters, green roof, and building systems. Certainly, the design and construction effort, and the logistical challenges, to correct the nominal encroachment create an unnecessary hardship to the City of Dover and its community because the effort and associated cost of modifying the applicable portion of the building is grossly disproportionate to any appreciable benefit to be gained.

b. The library building is an iconic building that serves the community as both an anchor library for Kent County and a gathering/meeting facility for the community. A closure of the building for the length of time necessary to accomplish modifications (if even possible) to meet the setback would create an extreme hardship to the both the city and the community at large. Additionally, both Kent County and the State of Delaware would also be impacted by the closure of the library due to its nature within the State Library system.

Staff Response:

Staff concurs with the applicant that it would be impractical to move the building or modify the building to eliminate the encroachment. Requiring that the ellipse portion of the building be modified would create an exceptional practical difficulty, in that the benefit gained by correcting the encroachment would not justify cost, public inconvenience, and the design and constriction difficulties required to correct the encroachment.

Variance Recommendation:

Staff recommends approval of the variance to allow for the building to encroach into the front yard by 2.7 feet (for a setback of 17.3 feet) for reasons as follows:

- The applicant has demonstrated exceptional practical difficulty as the building is constructed and moving or modifying the building would be a hardship.
- The difficulties associated with removing the encroachment are disproportionate to the benefit gained by the removal of the encroachment.
- The building constructed with the requested setback is consistent with the surrounding area, the downtown environment, and the H zone.

City of Dover

Board of Adjustment

January 16, 2013

V-13-01

Location:	127 South DuPont Highway
Applicant:	7-Eleven
Owner:	Lin Properties, LLC
Tax Parcel:	ED-05-077.06-01-61.00-000
Application Date:	December 14, 2012
Present Zoning:	C-4 (Highway Commercial Zone)
Present Use:	Vacant Building
Reviewed By:	Janelle M. Cornwell, AICP
Variance Type:	Area Variance
Variance Requested:	Allow for the building to encroach into the front yard setback and to allow the canopy to encroach into the rear yard setback.

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* of Article 4 §4.15 of the *Zoning Ordinance* pertaining to the front yard and rear yard setbacks. Specifically the applicant is requesting to allow the building to be located 24.85 feet from the right-of-way along South DuPont Highway and to allow the canopy to be located one (1) foot from the rear property line.

Adjacent Land Uses
The adjacent properties are commercial and residential uses. The properties to the north and east are zoned SC-2 (Community Shopping Center Zone). The properties to the south are zoned C-4 (Highway Commercial Zone). The properties to the west across South

DuPont Highway are zoned C-4 (Highway Commercial Zone) and R-10 (One Family Residence Zone).

Code Citation

Article 4 Section 4.15

	C-4
Minimum required:	
Lot area	
Lot width (ft.)	150 per building
Lot depth (ft.)	150
Front yard (ft.)	30
Side yard (ft.)	25
Rear yard (ft.)	10 or equal to building height
Side or rear yards which adjoin a residence zone (ft.)	30
Off-street parking	
Per 300 sq. ft. floor area or	1½
Per employee (whichever is greater)	1
Maximum permitted:	
Building height	
Stories	4
Feet	45
Floor area ratio	2.0
Lot Coverage	2.0

Exceptional Practical Difficulties Tests

Article 9, §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. Specifically the Board must determine:

2.1 Variance – The board shall have the authority to authorize variances from provisions of the zoning ordinance that are not contrary to public interest where the board determines that a literal interpretation of the zoning ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the zoning ordinance is observed and substantial justice done.

2.11 Area Variance. A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the zoning ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:

(a) the nature of the zone in which the property lies;

(b) the character of the immediate vicinity and the contained uses therein;
(c) whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
(d) whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the zoning ordinance.

1. The nature of the zone in which the property lies.

Applicant Responses:
The immediate area surrounding the site is zoned Highway Commercial (C-4) or Shopping Center (SC) and is fully utilized for commercial uses. The surrounding area is nearly all impervious with minimal green space. The subject site is also zoned C-4, is currently used for commercial activities and will continue being used commercially. There are no adjacent dissimilar uses that might otherwise benefit from a specific minimal front or rear yard requirement. Because the adjacent uses are similar, and within the same, or similar, zoning district, there is no need to utilize a specific yard depth to accommodate a buffer between properties. The nature of the zone is commercial and therefore lot development consists primarily of "hardscape" improvements that typically include buildings, parking areas, drive aisles, fuel islands and canopies, curbing, loading and unloading areas and other constructed infrastructure. A required front building setback distance of 30 feet on sites in commercial zones typically defaults to being used only for drive aisles, as there is not enough depth to construct drive aisles and adjacent parking spaces. A reduction in the front building setback (front yard requirement) may discourage the construction of these paved drive aisles in front of structures and actually allow more flexibility for these areas to be located behind the building, which is, and should be, an encouraged site layout strategy. A reduced front yard requirement would likely then encourage the creation of additional green space between the building and street, since the front area would no longer be needed for required circulation patterns in many cases. The site layout proposed exemplifies this strategy successfully. A variance from prescribed front and rear yard depth requirements allows site design flexibility, supports the commercial land use policies and recommendations of the comprehensive plan, all while improving the characteristics and nature of the zone in which this site lies. As stated in the comprehensive plan, the redevelopment of existing commercial sites is encouraged. Allowing design layout flexibility will support and encourage the future redevelopment of additional properties in the area.

Staff Response:
The property is zoned C-4 (Highway Commercial Zone) and is surrounded by other commercial uses. The use as a convenience store with gas pumps is a permitted use within the C-4 Zoning District. The previous use of the property was as a convenience store with gas pumps.

2. The character of the immediate vicinity and the contained uses therein.

   Applicant Responses:
   As stated above, the character and use of the immediate vicinity is commercial. Based on the current zoning and the developed nature of the area, coupled with the presence of S. DuPont Highway, it is unlikely that this immediate vicinity could be more appropriately zoned for a different land use with different zoning requirements. Granting the requested area variance will not change or negatively affect the character of the immediate area, or affect the allowable uses in the immediate area.

   Staff Response:
   The character of the vicinity is commercial. The Zoning Ordinance requires a thirty (30) foot setback from the right-of-way for the main building and a minimum of ten (10) feet or equal to building height for the canopy. The property is currently legal non-conforming with regards to the lot depth along East Loockerman Street. The property has 135 feet of lot depth and not the 150 required by the *Zoning Ordinance*. The right-of-way dedication required by DelDOT will increase the non-conformity of the parcel of land. The property line along East Loockerman Street will be approximately 129 feet and the north property line currently at 150 feet will be approximately 144 feet.

3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses.

   Applicant Responses:
   In general terms, the prescribed or allowable building setbacks for properties in this area are unlikely to have a negative effect on the development of an adjacent site, as zoning requirements in the area are unlikely to change significantly. An allowable reduced setback for the subject property will not pose an issue for the future use of a site in the immediate area because the area zoning and the uses therein are consistent. A change in zoning would not be appropriate, given the character of the site vicinity. It is unlikely that an adjacent site or property would be re-zoned for a dissimilar use, thereby creating a situation where an established building setback on one lot would create a building separation or buffer yard issue for an adjacent lot. Specific to the subject site, the proposed building is located towards the southwest corner of the site with the reduced front yard setback being adjacent to the S. DuPont Highway frontage as a result of DelDOT right-of-way dedication requirements. The side of the proposed building facing S. DuPont Highway is aligned with the building fronts of the nearest adjacent buildings to the north that are facing S. DuPont Highway. This reduced setback does not affect the neighboring property to the north and does not reduce or restrict vehicular access to the site or to the adjacent site. In order for the adjacent property to the north to be affected by the proposed site redevelopment, a significant reduction to the side yard requirement and an alteration of the existing parking access for the adjacent property would have to be proposed. The site design preserves the required side

yard and parking access for the adjacent property. With regards to the requested rear setback requirement, there is no adjacent neighboring property that would be affected. The rear of the property is bordered by an access alley which is utilized to provide vehicular access to the various commercial properties in the immediate area. The neighboring property is separated from the subject site by this access alley and therefore there is no effect on this property due to a reduced setback.

Staff Response:
The aerial photo provided by the applicant shows that the placement of the new building will be similar in setback to the placement of the buildings to the north. The placement of the new building would be in keeping with the character of the two buildings to the north with regards to placement along South DuPont Highway.

The placement of the canopy could potentially impact the cross access easement; however, the site was previously a convenience store with gas pumps.

The property would be able to meet the front yard setback without the dedication of right-of-way to DelDOT. The requirement for dedication of right-of-way is making the property more non-conforming than it currently is.

4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the zoning ordinance.

Applicant Responses:
If the front and rear setback restrictions were not removed, the owner would be precluded from redeveloping the site for the intended use. The necessary building and canopy separation could not be met, thereby dimensionally restricting the areas prescribed for safe vehicular movements for parking and site circulation. Elimination of parking between the building and canopy to reduce the separation between building and canopy would make parking insufficient to meet site parking requirements and would eliminate the convenience of parking along the storefront.

Staff Response:
An exceptional practical difficulty would be created by the inability to redevelop the site or to reestablish the previous use. The dedication of right-of-way and the existing legal non-conforming depth of the lot reduce the redevelopable area of the site. Safety concerns regarding site circulation could be created by reducing the drive aisle between the canopy and building.

If the drive aisle between the canopy and building were reduced to meet the minimum drive aisle width there is not enough room on the property for the canopy to meet the rear yard setback.

Variance Recommendation:

Staff recommends approval of the variances to allow for the building and canopy to encroach into the front yard and rear yard setbacks for reasons as follows:

- The applicant has demonstrated exceptional practical difficulty as the redevelopment of the site is hindered by a legal non-conforming parcel that will be even more non-conforming due to required right-of-way dedication.
- The applicant has demonstrated exceptional practical difficulty as the size of the parcel limits the redevelopment potential of the property.
- The use is in keeping with the nature of the zoning district as the previous use was a convenience store with gas pumps.
- The building placement would be in keeping with the two buildings to the north.
- Safety issues regarding site circulation could impact the site if the variances are not granted.
- There is not enough room on the property for the canopy and the building to meet the front and rear yard setbacks.